

200924057



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

MAR 18 2009

U.I.L. 408.03-00

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

Legend:

Taxpayer A =

IRA X =

Amount D =

Bank B =

Dear

This is in response to your letter dated xxxxxxxxxx, as supplemented by correspondence dated xxxxxxxxxxxxxxxxxxxxxxxxxx, submitted on your behalf by your authorized representative, in which you request a waiver of the 60 day rollover requirement contained in Section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalties of perjury in support of your request.

Taxpayer A maintained an individual retirement arrangement (IRA), IRA X, which was invested in a Certificate of Deposit (CD) with Bank B. It is represented that when the CD became due, Taxpayer A intended to roll the matured amount of Amount D, into another IRA. Taxpayer A asserts that her failure to accomplish a rollover of Amount D within 60-day period prescribed by section 408(d)(3) of the Internal Revenue Code (Code) was due to the medical condition and hospitalization of her husband and daughter which impaired her ability to accomplish a timely rollover.

It is further represented that on xxxxxxxxxxxx, the CD became matured and the Taxpayer A cashed it and deposited the Amount D into her personal checking account upon the advice of her husband. Taxpayer A represents that her husband who has been managing all of the family's financial affairs was, at that time, suffering from a variety of medical issues including a heart attack, hip relocation (dislocation of which had caused severe pain, disorientation and spasms), and a series of seizures and a stroke which gave him paralysis in his right side. Taxpayer A was a full time caregiver for her husband who was critically ill at that time. Taxpayer A asserts that she became very concerned about her husband's health and could not think of anything else other than taking care of her ailing husband. Taxpayer A further asserts that she has been the primary caregiver to her husband who was hospitalized during the 60-day rollover period.

In addition, Taxpayer A states that on xxxxxxxxxxxx, her daughter became seriously ill and was taken by ambulance to the emergency room and she then passed away on xxxxxxxxxxxx.

Taxpayer A asserts that her husband's medical condition and her daughter's illness and demise exacerbated the situation and prevented her from rolling over Amount D into another IRA within the 60-day rollover period prescribed by section 403(d)(3) the Code.

Taxpayer A further asserts that Amount D has been held in tact in her checking account since xxxxxxxxxxxx, and has not been used for any other purpose. In addition,

Based upon the foregoing facts and representations, Taxpayer A requests the Service, under its authority in Rev. Proc. 2003-16 to waive the 60-day rollover requirement for failed rollover, allows Taxpayer A to redeposit Amount D into an IRA.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if-

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th

day after the day on which the individual received the payment or distribution; or

- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending in the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not included in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity and good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occur after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R. B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including : (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, or hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover was caused by the medical condition and hospitalization of her husband and the sudden illness and demise of her daughter.

Therefore, pursuant to Code section 408(d)(3)(I), the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount D from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount D into a Rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount D will be considered a rollover contribution

within the meaning of section 408(d)(3) of the Code.

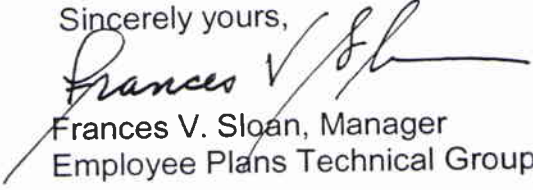
No opinion is expressed as to the tax treatment of the transactions described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

A copy of this letter has been sent to your authorized representative in accordance with a Power of Attorney (Form 2848) on file in this office.

If you have any questions regarding this letter, please contact xxxxxxxxxxxx, SE:T:EP:RA:T:3 at xxxxxxxxxx

Sincerely yours,


Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of letter ruling
Notice 437

cc: `